

Contract No.
03-WC-20-2653

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

OPERATIONAL WATER EXCHANGE AGREEMENT
BETWEEN
THE UNITED STATES BUREAU OF RECLAMATION
AND
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

THIS AGREEMENT is made this 22nd day of August, 2003, pursuant to
Section 3408(c) of the Central Valley Project Improvement Act (CVPIA) of October 30,
1992, Public Law No. 102-575, by and between the UNITED STATES OF AMERICA,
acting by and through the Bureau of Reclamation (Reclamation), and The Metropolitan
Water District of Southern California (MWD).

EXPLANATORY RECITALS

WHEREAS, Reclamation has been given the authority to release up to 50,000
acre-feet (af) of additional water from the Trinity River Division of the Central Valley
Project (CVP) to benefit lower Klamath River fish runs; and

WHEREAS, Reclamation desires to acquire 50,000 af of water to back-stop the foregoing release in order that there not be an adverse impact to other CVP contractors; and

WHEREAS, MWD currently has or will have 50,000 af of water in Shasta Reservoir that MWD desires to make available to Reclamation in exchange for a like amount of water to be returned to MWD at some time in the future; and

WHEREAS, Section 3408(c) of the CVPIA authorizes the Secretary to enter into contracts with any California water user or water agency for the exchange of water for fishery purposes

NOW, THEREFORE, in consideration of the covenants herein contained, the parties agree as follows:

1. MWD agrees to exchange up to 50,000 af of water that it now owns with Reclamation for an equivalent amount of water to be repaid to MWD as described herein. It is anticipated that the entire 50,000 af of water will have accumulated in Shasta or Oroville Reservoirs and could be moved to Shasta Reservoir by October 31, 2003. In the event the Sacramento-San Joaquin River Delta goes out of balance before the entire 50,000 acre-feet of water is accumulated, this agreement shall apply to the amount of water actually accumulated.

2. The water referred to in the preceding paragraph shall be used by Reclamation as a back-stop for water to be released into the Trinity River for fishery purposes in order that the Trinity release will have no adverse impact on CVP water users.

3. Reclamation shall repay an amount of water equal to that provided to Reclamation by MWD subject to the following conditions:

- a. Repayment will occur at a time when the CVP or its contractors will not be adversely impacted by the repayment.
- b. Repayment may occur in increments.
- c. The point of delivery for the repayment water shall be Shasta Reservoir. MWD shall be responsible for any losses associated with the conveyance of the water from the point of delivery to the Delta pumps or any other ultimate destination.
- d. Reclamation will notify MWD when water for repayment is available and the quantity of water anticipated to be available. MWD will then notify Reclamation if it can and is willing to accept the water either for pumping in the Delta or for storage in State Water Project facilities. Reclamation will attempt to give MWD at least 5 days notice of the availability of water.
- e. The parties will attempt to accomplish full repayment by December 31, 2008; Provided, that if Reclamation has not been able to make any water, or less than the full quantity of water, available for repayment

during that period of time, or MWD has not been able to accept water for export pumping or storage, the final date for repayment shall be extended for the period necessary to accomplish full repayment by mutual agreement.

4. This exchange will not involve payment of any money between the parties; Provided, however, that MWD shall be solely responsible for payment of any costs incurred in conveyance of the water after it is delivered to MWD from Shasta Reservoir. The delivery of the water repaid to MWD shall not involve the use of Project energy.

5. In order to avoid Reclamation having to obtain an amendment of its water right permits to include MWD within the CVP authorized place of use, it is hereby agreed that for any water repaid after Shasta has gone into flood control operations or February 29, 2004, whichever occurs first, MWD shall arrange a secondary exchange between MWD and a CVP/SWP contractor whereby the Project Water released in repayment of Reclamation's obligation to MWD will be delivered to a CVP contractor in exchange for that contractor delivering a like quantity of SWP water to MWD. Reclamation will not incur any costs involved in this secondary exchange.

6. During the performance of this Contract, MWD agrees as follows:

(a) MWD will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The MWD will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, disability, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. MWD agrees to post in conspicuous places, available to

employees and applicants for employment, notices to be provided by Reclamation setting forth the provisions of this nondiscrimination clause.

(b) MWD will, in all solicitations or advertisements for employees placed by or on behalf of MWD, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

(c) MWD will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by Reclamation, advising the labor union or workers' representative of MWD's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) MWD will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) MWD will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of MWD's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and MWD may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) MWD will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. MWD will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event MWD becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, MWD may request the United States to enter into such litigation to protect the interests of the United States.

7. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve MWD from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

8. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid until approved in writing by the other party.

9. No Member of or Delegate to Congress, Resident Commissioner, or official of MWD shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

10. (a) MWD shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 if the entity is a State or local government entity [Title III if the entity is a non-government entity], and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Contract, MWD agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) MWD makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to MWD by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. MWD recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Article, and that the United States reserves the right to seek judicial enforcement thereof.

11. To the extent authorized by law, each party to this Agreement shall hold the other party, its officers, agents and employees harmless from any and all claims and losses

resulting to any person, firm, corporation who may be injured or damaged by the original party's performance of this Agreement. However, neither party shall be required to hold the other party, its officers, agents and employees harmless from liability, nor to indemnify the other party, its officers, agents and employees, for losses or damages, which result from the negligence of that other party

12. Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of MWD, when mailed, postage prepaid, or delivered to the Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Sacramento, CA 95825, ATTN: MP-440, and on behalf of the United States when mailed, postage prepaid, or delivered to The Metropolitan Water District, 1121 L Street, Suite 900, Sacramento, CA 95814. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY
James E. Tinker
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

THE UNITED STATES BUREAU OF RECLAMATION

By *John F. Davis*

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By *Ronald J. Jones*